IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 1691 of 2007
Date of decision 24 .4.2007

M/s Ganesh Rice and Genl. Mills Pvt. Ltd. .. petitioner

Versus

State of Punjab and others .. Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE RAJESH BINDAL

PRESENT: Mr. R.K.Bajaj, Advocate for the petitioner
Mr. M.P.Goswami. DAG Punjab.

M.M.Kumar, J.

The short issue raised in this petition filed under Article 226 of the Constitution is whether the provisions of Section 20(5) of the Punjab General Sales Tax Act (Third Amendment) Act, 2000 (for brevity 'the Act') would apply or the unamended provisions of the Act would govern the issue with regard to pre-deposit of 25% of the demand created before filing of statutory appeal in respect of assessment year 1999-2000. The petitioner has challenged order dated 25.5.2006 (Annexure P.6) passed by the VAT Tribunal, Pun jab which has applied the amended provisions of Section 20 (5) of the Act by holding that the appeals filed by the petitioner were not maintainable. Accordingly, it has been held that no appeal is to be entertained by the Appellate Authority unless such appeal is accompanied by satisfactory proof of the payment of demand raised.

The matter is no longer res-integra as a Division Bench of this Court in the case of Oswal Agro Mills Ltd. v. State of Punjab (2005) 139 STC 51 has taken the view that the amendment made on 7.4.2000 would not be applicable retrospectively. In other words, the assessment year (1999-

2000) which comes to an end on 31.3.2000 in the present case would not attract the application of amended provisions. It may be mentioned that before the amendment there was a proviso incorporated with Section 20(5) of the Act which was to the effect that if the authority was satisfied regarding the inability of the dealer to pay tax assessed or the penality, if any, imposed or both then for the reasons to be recorded in writing, such an authority could have entertained the appeal without payment of tax or penalty or both having paid or after part payment of such tax or penalty imposed whereas according to the amended provisions payment of 25 percent of tax, penalty and the interest accrued thereon has been made mandatory. The Division Bench has also held that the right of appeal is a vested right as it exists on the date of commencement of the lis which in the present case would mean the date when the return is filed or it is required to be filed.

In view of the above, we set aside the initial order dated 25.5.2006 (Annexure P.6) and rectification order dated 12.12.2006 (Annexure P.8) passed by the Tribunal. The case is remanded back to the Tribunal with a direction to consider the case of the petitioner under the un-amended provisions of Section 20(5) of the Act by keeping in view the Division Bench judgement of this Court in Oswal Agro Mills case (supra).

(M.M.Kumar)
Judge

(Rajesh Bindal)
Judge

24.4.2007

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